**April 8, 2021 Update and New Practice Advisory on the**

**Youth & Young Adult Provisions of the Consolidated Appropriations Act**

On December 27, 2020, the Consolidated Appropriations Act, 2021, P.L. 116-260 (the “Act”), was enacted into law. It makes continuing appropriations for specified federal agencies and provides temporary flexibilities and assistance in response to the COVID-19 pandemic and public health emergency.

***Why is this important to our practice area?*** Division X of the Act, entitled: the “Supporting Foster Youth and Families through the Pandemic Act,” includes additional funding for several programs authorized under titles IV-B and IV-E of the Act and requires state child protection agencies to take a number of actions to protect and support youth/young adults currently or formerly in foster care during the pandemic. The Act brings two major changes to the support DCF must provide current and former foster youth. First, it amends Title IV-E to extend eligibility beyond age 21 and waives the employment/

school requirements for young adults who sign back into DCF’s care after age 18. Second, the Act provides increased funding and expands eligibility for financial assistance and other services under the Chafee program to current and former foster youth and young adults up to age 27.

Information about the law and our first practice advisory is available on our website at <https://www.publiccounsel.net/cafl/cafl-news/covid-19-news-and-resources/resources-for-youth-and-young-adults/>.

***What’s New about this Law?*** Last month, the federal government issued a Program Instruction (PI) providing guidance to states on implementation of the new law. The PI clarified that there is **no upper age limit** on the law’s prohibition against discharging young adults from DCF care based on age. This means that DCF must not discharge a young person because they’ve reached their 22nd birthday.

***Regarding Young Adults Turning 22*:**

* Our current MA statute requires DCF to continue to offer foster care placement to young adults up to age 22, a year past the original IV-E reimbursement period.  G.L. c. 119, sec. 23(f).
* Under this new Act, DCF may not require a young adult to leave foster care solely due to age (22) from **December 27, 2020 through September 30, 2021**. See section 4(a) of Division X. Nor may it determine a young adult ineligible for title IV-E foster care maintenance payments due to age or failure to meet the education/employment conditions during this time period.
* Further, until September 30, 2021, DCF must allow for voluntary re-entry to any young adult who exited care due to age between **January 27, 2020 and April 20, 2021**. See section 4(b) of Division X. (This April date may be extended if the federal public health emergency designation is extended beyond that date.) DCF may not find a young adult who re-enters foster care during the COVID-19 public health emergency period (defined as April 1, 2020 through September 30, 2021) ineligible for title IV-E foster care maintenance payments solely due to age or the education/employment conditions before October 1, 2021. See section 4(d)(2)(D) of Division X. DCF must provide notice to the young adult of the option to re-enter and facilitate such re-entry. See section 4(b)(2 & 3) of Division X.
* **There is no upper age limit** on remaining in foster care or re-entering foster care under these provisions, which means DCF may be required to allow a youth age 22 or older to remain in or re-enter foster care through September 30, 2021. There is no upper age limit for title IV-E foster care maintenance payments. See [US Children’s Bureau Program Instruction ACYF-CB-PI-21-04 issued on March 9, 2021.](https://www.acf.hhs.gov/sites/default/files/documents/cb/pi2104.pdf)
* DCF must make reasonable efforts to determine IV-E eligibility for these young adults. Further, it must continue to ensure that the safety, permanence, and well-being **needs** of older foster youth, including youth who remain in or re-enter foster care, are **met**. DCF must continue to develop, review, and revise **transition plans** and continue to assist the youth with identifying adults who can offer meaningful, **permanent connections**. See section 4(c) of Division X.
* The case review requirements of the Act (which are defined further at section 475(5)) apply to those children age 18 or older on whose behalf a title IV-E foster care maintenance payment is made. Therefore, DCF must ensure that it is meeting the case plan, periodic review, and permanency hearing requirements for these young adults.

***Practice Tips for Representing Young Adults***:

Although DCF has an obligation to provide notice, if you have a client who aged out of care (turned 22) between January 27, 2020 and April 20, 2021, or who will age out of care (turn 22) before September 30, 2021, you should reach out to that client and inquire into whether or not they wish to remain in/re-enter the foster care system, even if it is beyond their 22nd birthday. You should also reach out to the adolescent unit in charge of the case because it’s highly likely they may not be aware of the provisions of this Act. If you have a client who was discharged or is being discharged due to being unable to meet the work/school requirements due to the pandemic, you should speak to your client and DCF about their right to stay/return. Every effort should then be made to maintain/resume applicable foster care payments/services/reviews for the young adult.

In addition, given the permanency hearing requirements, it would follow that we should make sure DCF is re-opening our client’s PYA case in the respective juvenile or probate and family court. Your arguments may differ depending upon the posture of the case:

* If the young adult has not yet been discharged by DCF, you can argue that the court retains jurisdiction under 119 sec. 23(f) until the judge approves an appropriate transition plan.  In addition, you could argue that no transition plan is appropriate in the middle of a pandemic where the federal law forbids DCF from discharging a young adult on grounds they’ve turned 22 (or can’t meet the work/school requirements due to COVID).  If the judge disagrees, consider taking this up on interlocutory appeal.
* If the case was dismissed without objection at age 22 and now the young adult wants to return to care, it may be a harder argument.  The client may have waived the right to object to DCF’s failure to provide an appropriate transition plan. Or maybe the plan was fine at the time but now things have fallen apart, and the young adult wants to return to DCF.   The argument that the Juvenile Court should reopen the case is more difficult.  If the court won’t continue jurisdiction, and the young adult is due for their permanency hearing, DCF may not get IV-E reimbursement.  This does not absolve DCF from the responsibility under federal law to continue to provide care.  If the client is not due for a permanency hearing between now and September 30, this shouldn’t matter.